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Decision

Matter of: Satellite Services, Inc.

File: B-286508; B-286508.2

Date: January 18, 2001

Laurence Schor, Esq., Susan L. Schor, Esq., and William Robinson, Esq., McManus, Schor, Asmar & Darden, for the protester.

Jeffrey A. Lovitky, Esq., for NVT Technologies, Inc., an intervenor.

Vicki E. O'Keefe, Esq., and Marilyn W. Johnson, Esq., Naval Facilities Engineering Command, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's source selection decision was unreasonable is sustained where the evaluation did not comport with the solicitation's evaluation criteria and the source selection decision failed to reasonably assess the significance of the technical differences (in particular, the substantial difference in the proposed level of effort) between the lower-rated proposal of the awardee and the higher-rated proposal of the protester.

DECISION

Satellite Services, Inc. protests the award of a contract to NVT Technologies, Inc. under request for proposals (RFP) No. N62467-00-R-6643, issued by the Department of the Navy, for multi-function facilities support services at the Naval Support Activity, Naval Air Station, and Joint Reserve Base in New Orleans, Louisiana. Essentially, Satellite contends that the Navy's best value decision was flawed because the Navy did not meaningfully evaluate price proposals, that aspects of the awardee's proposal were misevaluated, and that discussions with Satellite were inadequate.

We sustain the protest.

The RFP, issued on April 21, 2000, contemplated the award of a combination fixed-price and indefinite-quantity contract for a base year, with 4 option years. The successful contractor will provide all labor, supervision, tools, materials, and transportation support necessary to perform maintenance, recurring and preventive

maintenance, repairs, alterations, construction, and equipment installation for all facilities, systems, and equipment at the three sites. The RFP consolidates the work requirements of 13 individual contracts, one of which the protester is performing currently. Hearing Transcript (Tr.) at 66, 87.¹

As amended, the RFP identified in “annexes” the major functional performance areas, as follows: Annex 1, General Requirements; Annex 2, Service Calls; Annex 3, Recurring Work, Standing Job Orders, and Preventive Maintenance; Annex 4, Specific Job Order (indefinite quantity work); and Annex 5, Special Contract Requirements. RFP § C, at C1-1–C5-9; RFP § J attaches. J-C1, J-C15-21, J-C23-26. The RFP described the specific tasks under these major functions, and the acceptable standards for performing these tasks.² Id. Although the RFP did not establish required personnel levels, it did establish certain minimum requirements applicable to various categories of personnel. Under the heading “Manpower,” the RFP required, in relevant part:

The Contractor shall have a sufficient workforce to perform all contract requirements. The Contractor shall be required to have on staff at all times at least the following qualified employees:

.

b. One locksmith bonded by the Associated Locksmiths of America or another approved bonding agency.

RFP § C1.13.

The RFP provided for award on a best value basis, price and other factors considered. RFP § M.1. To determine which proposal offered the best value, the RFP identified four technical factors which, when combined, were approximately equal to price. The evaluation factors were: (1) past performance, (2) experience,

¹ The chair of the technical evaluation team (TET), who is also the site manager at the Naval Air Station where the contract will be performed, testified that the work requirements for the protested RFP exceed the scope of work under the contract Satellite is currently performing. Tr. at 57, 67. He further testified that Satellite’s base maintenance contract is “probably 90 percent of this [protested] solicitation.” Id. at 87.

² For example, the Annex 1 work requirements include training, quality control, program management and supervision, and hurricane preparation and disaster relief services. Annex 2 sets forth the requirements for service calls at all three physical locations, including calls for locksmith services.

(3) methods and procedures, and (4) corporate resources and management.³ As relevant here, the methods and procedures evaluation included review of offeror-submitted information in the following areas: (1) rationale to support the work effort of the proposed full-time equivalent (FTE) positions,⁴ (2) employee/subcontractor qualifications, (3) tools, supplies and equipment, (4) rationale for personnel overhead expenses included in the fixed-price work, (5) indefinite-quantity work plans, (6) recurring work schedule, (7) purchasing system, and (8) quality control plan. The RFP provided that “[t]echnical proposals will be evaluated to ensure the Offeror understands the requirements of the RFP.” RFP § M.2. The price evaluation was to include review of the offerors’ section B unit and extended prices and their supplemental pricing information (direct and indirect costs) for the fixed-price portion of the base and option years. RFP § M.2(e).

Three offerors, including NVT and Satellite, submitted proposals by the June 23, 2000 amended closing date. After individually evaluating the offerors’ technical proposals, the TET convened to assign overall consensus ratings, ranking, and narrative comments to each proposal. The TET chair then prepared a consolidated report for the source selection authority (SSA) (who was the contracting officer), reflecting the consensus ratings, ranking, and narrative explanations for the [DELETED] ratings, along with the evaluators’ individual scoring sheets and narrative assessments of each offeror’s proposal.⁵ All three proposals were included in the competitive range and discussions were held.

Of particular importance here, the offerors proposed dramatically different staffing levels, which meant (because pricing was largely driven by staffing levels) that they proposed dramatically different pricing. Satellite (who, as noted above, was the incumbent for the great majority of the work) proposed [DELETED] FTEs; NVT

³ The RFP disclosed the relative weight of the four technical evaluation factors as being “of equal importance,” yet these factors were also “listed in descending order of importance.” RFP § M.2. The RFP was thus patently defective. Since we sustain the protest and recommend corrective action, in implementing the recommended action, the agency should ensure that the RFP consistently sets forth the relative importance of the technical factors.

⁴ An FTE was defined as the planned user of 2,080 straight time paid hours in a 12-month contract period. RFP § C1.4.v.

⁵ The agency’s source selection plan (SSP) established [DELETED] ratings of [DELETED] to determine the overall technical acceptability of proposals. The SSP, however, was not incorporated into the RFP or otherwise provided to offerors. Agency Report (AR) exh. 9, SSP at 10–11.

proposed [DELETED] FTEs; the third offeror proposed about [DELETED] FTEs.⁶ The TET identified NVT's [DELETED] as a weak point. AR exh. 13, TET Report, June 29, 2000 at 4. Because of the TET's concern, the agency sent NVT the following discussion question:

The technical proposal submitted proposed [DELETED] FTE's (Full Time Employees). This proposed number of FTE's [DELETED] in comparison to [DELETED]. In addition, the proposed contract has [DELETED] the current base contract. How does your firm plan to [DELETED]

AR exh. 16, Letter from Agency to NVT, Aug. 15, 2000. In its final proposal revision, NVT [DELETED] its proposed staffing level to [DELETED] FTEs; Satellite's [DELETED] FTEs; and the third offeror [DELETED] its proposed staffing level to [DELETED] FTEs.

The record shows that the price evaluation team (PET) reviewed each price proposal to determine: (1) whether there were mathematical errors in section B unit and extended prices, (2) the completeness of the proposed prices, and (3) the accuracy of the offeror-provided spreadsheets used in computing and compiling labor rates, fringe benefits, and material costs. Tr. at 10-12. The PET thus did not address the question of whether offerors had proposed an appropriate number of FTEs. The price evaluator testified that, while he was aware of the substantial difference in FTEs between the three proposals, he did not determine if the "FTEs proposed [were] staffed correctly in the work requirements." *Id.* at 36. Instead, the price evaluator alerted the administrative contracting officer (not the SSA or the TET) of the difference in FTEs and asked him to "make sure that the [TET] understood that there was a big difference in the FTEs." *Id.* at 13-14. As to the reasonableness of the proposed prices, the PET, in its report to the SSA, noted that it "did not have an accurate nor complete government estimate to determine price reasonableness" so that the PET "had to research pricing data . . . from the existing contract as a guide."⁷ AR exh. 13, PET Report, June 28, 2000. The PET's report, however, did not include

⁶ It is not clear from the record whether NVT's initial offer was evaluated as proposing [DELETED] or [DELETED] total FTEs. The TET report suggests that NVT's initial proposal was evaluated as proposing {DELETED} total FTEs, but a discussion question from the agency to NVT (quoted in the text below) refers to [DELETED] FTEs.

⁷ While Satellite points out that the Business Clearance Memorandum (BCM) listed a government estimate, the basis of that figure is not clear, and it is clear from the record that that estimate played no role in the evaluation.

any comparison of the offerors' proposed prices to the prices in the current contract.⁸ Tr. at 24-25.

The consensus evaluation results for each offeror are set forth below:

	Satellite	Offeror A	NVT
Overall Technical Rating⁹ / Ranking	[DELETED]	[DELETED]	[DELETED]
Initial Total FTE	[DELETED]	[DELETED]	[DELETED]
Initial Total Price for 5 Years	[DELETED]	[DELETED]	[DELETED]
Final Total FTE	[DELETED]	[DELETED]	[DELETED]
Final Total Price for 5 Years	[DELETED]	[DELETED]	\$21,084,718.63

AR exh. 13, BCM, Aug. 14, 2000, and exh. 23, BCM, Sept. 19, 2000.

The SSA reviewed the final evaluation results and subsequently asked an evaluator (a member of the TET) to conduct a best value analysis to determine if Satellite's higher-rated technical proposal offered benefits sufficient to justify paying the difference in price between its proposal and NVT's.¹⁰ In a memorandum dated September 19, the evaluator provided his assessment, stating:

In doing a Best Value Analysis of the three proposers an in depth study and comparison . . . was performed. [Satellite] does offer [DELETED].

AR exh. 23, Technical Evaluation Team Member Memorandum, Sept. 19, 2000.

⁸ Since there was no valid government estimate, the SSA sought assistance from the resident Defense Contract Audit Agency (DCAA) auditor. Tr. at 231. The Navy stipulates that the DCAA auditors only "looked at the price proposals" in order "to prepare price questions." The agency further stipulates that the DCAA auditors did not perform "any price, cost or any other analysis of any of the offerors' proposals" nor did the auditors "perform a comparison of the proposals." Hearing exh. 1, Agency Stipulation, Dec. 15, 2000.

⁹ The SSP sets forth the [DELETED]

¹⁰ The record, including the testimony of the SSA, shows that the SSA was aware that this evaluator had no prior experience in performing a best value analysis, although "he had access to other people in our building who had done a best value analysis " Tr. at 244-45.

On September 19, the SSA selected NVT for award and signed the selection decision statement without making any substantive changes to the best value assessment made by this evaluator. Specifically, the selection decision states:

The TET provided a Best Value Analysis/Trade-Off review and determined that Satellite Services [DELETED].

Id., Source Selection Decision, Sept. 19, 2000, at 3. By letter dated September 19, the agency notified Satellite and Offeror A that NVT was the apparent successful offeror and award was made to NVT on September 29. After a debriefing by the agency, Satellite filed this protest, supplementing it based on information received in the agency report.

The crux of the protester's objections to the agency's conduct of this procurement is that the selection decision is flawed because the underlying price and technical evaluations were unreasonable. The protester argues that the agency made no effort to determine whether NVT's approach based on [DELETED] FTEs would satisfy the solicitation requirements. In contending that the agency acted unreasonably, Satellite focuses on the fact that the record indicates that the agency did not meaningfully evaluate the price difference among the competing proposals, which was driven by the number of proposed FTEs. To illustrate, the protester maintains that the price analysis was inadequate because the agency failed to evaluate the Annex 3 preventive maintenance task requirements for which NVT and Satellite proposed disparate prices [DELETED] to determine if NVT's annual price was too low or Satellite's was too high. Protester's Post-Hearing Comments at 3-4; Protester's Comments at 4, 7.

The Navy responds that it performed an appropriate price analysis of the proposals consistent with the requirements of Federal Acquisition Regulation (FAR) § 15.404-1¹¹ in that it determined that the offered prices were reasonable based on the number of FTEs proposed. Agency's Post-Hearing Comments at 2-3. Moreover, while the agency acknowledges that the three firms apparently used different estimating standards to determine the number of FTEs needed to perform the work requirements--NVT used the Engineering Performance Standards (EPS) Manual (NAVAC P-171)--the agency argues that:

¹¹ The agency correctly points that the FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including comparison of the prices received with each other; comparison of previously proposed prices for the same or similar items; comparison with independent government estimates; and analysis of pricing information provided by the offeror. FAR § 15.404-1(b)(2); Cardinal Scientific, Inc., B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70 at 4.

[b]ecause NVT's technical proposal is acceptable, and its pricing tracks the proposed staffing level, the pricing is perforce fair and reasonable even had there been no price competition. Although no Government Estimate (GE) was required (in effect a third estimate as among the protester and the awardee), either the NAVFAC P-171 EPS Manual or the incumbent contract could have served as a valid starting point for such an estimate. . . . By the same token, critically considering NVT's use of the Navy EPS manual to establish staffing levels would accomplish the same thing as critically comparing the NVT price to a GE.

Id. at 3.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the record to determine whether the agency acted reasonably and consistent with the stated evaluation factors as well as applicable statutes and regulations. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 4. Implicit in the foregoing is that the evaluation must be documented in sufficient detail to show that it was reasonable and bears a rational relationship to the announced evaluation factors. FAR §§ 15.305(a), 15.308; ACS Gov't Solutions Group, Inc., B-282098 et al., June 29, 1999, 99-1 CPD ¶ 106 at 13. While we will accord greater weight to the contemporaneous record in determining whether an evaluation was reasonable, post-protest explanations that are credible and consistent with the contemporaneous documentation will be considered in our review. Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6-7; NWT, Inc.; PharmChem Labs, Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. As discussed below, we find that there is insufficient information and analysis in the record for us to determine that the award selection based upon this evaluation was reasonable, and we sustain the protest on this basis.

As noted above, the RFP provided that "[t]echnical proposals will be evaluated to ensure the Offeror understands the requirements of the RFP." RFP § M.2. Under the methods and procedures evaluation factor, offerors were to address the "methods and procedures of accomplishment for each functional area" and "provide the rationale to support the work effort" of the proposed FTEs. Id. §§ M.2(c), M.2(c)(1).

Our review of the entire record, including the testimony of agency witnesses introduced into the record at a hearing conducted in connection with this protest, shows that, contrary to the RFP evaluation scheme, the agency did not meaningfully evaluate offerors' methods and procedures for accomplishing the work. Specifically, the agency failed to meaningfully evaluate either the offerors' widely differing approaches to performing the work or the reasonableness of the offerors' rationales offered in support of the widely differing number of proposed FTEs. In particular, the agency was faced with a proposal from a non-incumbent that proposed to perform the work at a [DELETED] level than that proposed by Satellite, who was the

incumbent on the great majority of the work. While NVT [DELETED] its proposed staffing level in response to the concern the agency raised during discussions, our review of the record leads us to conclude that the agency's eventual acquiescence in NVT's [DELETED] FTE numbers was unsupported.

Regarding how the agency evaluated an offeror's approach to the work and its rationale for the adequacy of the FTEs proposed, the TET chair testified:

TET Chair: [W]hat we did is we looked at the FTE information that was provided in the proposals to ensure that the offerors understand the work that they were required to do by the solicitation and that they planned and appropriated FTEs accordingly.

GAO: How did you do that?

TET Chair: Well, we didn't have a government estimate of FTEs to compare to, so we couldn't do that. Essentially what we did, in the case of Satellite Services, is used my experience with the current contracts and also [another member of the TET's] experience with the current contracts. And in the case of NVT, they had used [the Navy EPS Manual], I believe it is, which is basically a [preventive] maintenance manual, and they used information out of that to estimate, you know, how many hours it takes to do certain functions.

Tr. at 74-75. We do not believe that the mere mention of the Navy EPS manual can substitute for the analysis that, in our view, was called for, particularly in light of NVT's [DELETED] proposed staffing level. In particular, while NVT may have relied on the Navy EPS manual, it is not clear that the agency performed its own review of the adequacy of NVT's staffing, as measured either by the Navy EPS manual or otherwise. More generally, the record indicates that the agency did not perform a meaningful analysis of whether NVT's staffing would satisfy the solicitation requirements. Instead, the agency simply relied on the experience of two TET members to determine that NVT's initial FTEs were [DELETED], and then ultimately determined, after NVT [DELETED] its FTEs in response to discussions, that the FTEs proposed were [DELETED], without performing any meaningful analysis. Tr. at 77, 80, 81, 83, 115-16.

The agency's failure to evaluate the offerors' approach to the work requirements and the rationale for their proposed FTEs was particularly significant here because the number of FTEs proposed accounted for much of the difference in the competing firms' proposed prices. Even if the evaluators believed that the number of FTEs proposed by NVT was [DELETED] and that NVT could successfully perform the solicited requirements with that level of effort, the record contains no evidence to support the reasonableness of such a conclusion.

In fact, the record evidences that the agency recognized that Satellite's proposed number of FTEs represented the [DELETED] level of effort for the contract, so that it was unreasonable for the agency to accept NVT's proposed [DELETED] level without more scrutiny. For example, the TET chair wrote, in a July 15, 2000 e-mail in response to the SSA's July 11 e-mail request for a best value analysis of Satellite's initial technical proposal, as follows:

[Satellite's] proposed staff is largely based on many years of experience with performing essentially identical work, not an estimating tool. Common sense would tell you that their numbers are more accurate, when you consider things such as hurricane preparation and recovery, after hours emergencies, quirks and individual characteristics of old, outdated equipment that only they would know about . . . One other thing to note . . . the solicitation only specifies historical numbers of service calls, by priority. It does not break down service call history by trade or material costs. Obviously, [Satellite] has this type of information, and can bid more accurately than another contractor who is not familiar with the two bases.

AR exh. 14, E-mail from TET Chair to SSA, July 15, 2000.¹²

The TET chair and the SSA thus had reason to believe that NVT's proposed [DELETED] staffing level might reflect a lack of understanding of the work, or at least a level of understanding below that of Satellite. Indeed, as noted above, the evaluators initially expressed concern about NVT's proposed [DELETED] staffing level and raised the matter with NVT during discussions. While NVT [DELETED] its proposed staffing level in its final proposal, the agency was still faced with a difference between [DELETED] FTEs, proposed by the more experienced, more knowledgeable offeror, and [DELETED] FTEs, proposed by NVT. Although we recognize that the agency could have had a reasonable basis to find NVT's final proposed staffing level adequate, the record as it stands does not support the agency's conclusion that NVT's [DELETED] in its proposed staffing level to [DELETED] FTEs was a reasonable basis to view the agency's earlier concern as resolved.

Even if the agency had a reasonable basis for concluding that NVT could do the work with its proposed staffing level of [DELETED] FTEs, the record does not include a legally adequate cost/technical tradeoff between NVT's proposal and Satellite's.

¹² Although this e-mail was prepared prior to the receipt and review of final revised proposals and the selection decision, the record shows that the overall technical rating of final revised proposals did not change. Moreover, the TET chair's testimony at the hearing was consistent with this contemporaneous record. Tr. at 61-62.

FAR § 15.308 requires that a source selection official's decision "shall be based on a comparative assessment of proposals against all source selection criteria," and that "the source selection shall be documented," and "include the rationale for any business judgments and tradeoffs made or relied on" by the source selection authority. While we recognize that the large price difference between the proposals might have made the selection of NVT appear obvious (and that selection could ultimately be justified), the SSA here did not satisfy her obligations under the FAR. As stated above, Satellite's higher-priced proposal offered substantially more staff and was rated [DELETED] overall under the technical factors compared to the NVT proposal, which, while it was about [DELETED] percent [DELETED] in price, offered approximately [DELETED] percent fewer FTEs and received an overall [DELETED] rating.

The only comparative assessment of the proposals in the record is the "best value" assessment of one technical evaluator, who attempted to quantify the value of the technical advantages of Satellite's highest-rated technical proposal and concluded that the advantages of Satellite's proposal, which the TET rated [DELETED], were worth "no more than [DELETED] year over . . . NVT." AR exh. 23, Technical Evaluation Team Member Memorandum, Sept. 19, 2000. While quantification of the value of technical differences is not required, a source selection official may quantify the value of technical differences in dollar terms as part of a cost/technical tradeoff; the quantification, however, must be rationally based and consistent with the RFP. University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6. There is simply nothing in the record to support the evaluator's judgment that Satellite's proposal offered advantages worth only [DELETED] a year compared to NVT's. Further, the SSA testified, when questioned directly, that she did not discuss this best value assessment with the evaluator or question the basis for his conclusion, and she did not ask him for any data used to quantify the value of Satellite's technical advantage. Tr. at 308. The SSA essentially adopted the evaluator's judgment as to the relative value of Satellite's proposal without reviewing the proposals and without any evidence that the judgment was rational or consistent with the findings of the TET.

According to the hearing testimony, the SSA believed that the [DELETED] rating assigned to Satellite's proposal may have been primarily attributable to the firm's incumbency and that this meant, in her view, that its offer was not worth the price premium. However, the SSA's rationale for her position is not reflected in the record and is not consistent with the underlying technical evaluation. The agency's technical evaluation of Satellite's proposal identifies a number of strong points and positive comments that are not clearly the result of incumbency advantage. For example, the technical evaluators found that Satellite proposed a [DELETED]. The TET concluded that Satellite has "[DELETED] proposal and would leave [DELETED] to meet the requirements of the performance work statement." AR exh. 13, TET Report, June 29, 2000, at 1-2. The SSA's selection decision does not address this evaluation information. Similarly, while the SSA's selection of NVT relies on

[DELETED] contained in NVT's proposal, neither the initial nor final evaluation reflects [DELETED] in NVT's proposal. It appears that the SSA relied exclusively on the one evaluator's opinion and disregarded the TET report. For these reasons, we conclude that the record does not support the SSA's award decision. In the absence of an adequate record to support the award, we sustain the protest.

Satellite also protests the agency's evaluation of one aspect of NVT's technical proposal, alleging that NVT's proposal did not satisfy the RFP requirement that the successful contractor should have a bonded locksmith "on staff at all times". This protest allegation is based upon the fact that NVT proposed only [DELETED] FTE for a bonded locksmith. Protester's Post-Hearing Comments at 8-9. The agency's position is that there is no evidence that NVT cannot perform the solicitation requirements with fewer than [DELETED] hours for a bonded locksmith. Agency's Post-Hearing Comments at 10-11. We disagree. In the context of this RFP, the plain meaning of "on staff at all times" is a full-time employee. Thus, since NVT's proposal did not meet the solicitation requirement for a full-time locksmith, we find that the agency improperly relaxed the terms of the solicitation for NVT. Award to NVT on the basis of its noncompliant proposal was improper and we sustain the challenge to the evaluation in this area. See For Your Info., Inc., B-278352, Dec. 15, 1997, 97-2 CPD ¶ 164 at 4.

We recommend that the agency clarify its needs concerning the locksmith requirement. In addition, as noted previously, there is a conflict in the RFP as to the weight to be assigned the technical evaluation factors. We recommend that the agency resolve both these matters by amendment prior to reopening and reevaluation. We recommend that the agency then reopen discussions, request final revised proposals, evaluate those proposals consistent with the RFP to determine if each offeror's proposed approach, including its proposed staffing level, will satisfy the work requirements, and make a new source selection decision consistent with the amended evaluation scheme. If, after reevaluation, NVT's proposal does not represent the best value to the government, we recommend that the agency terminate the award to NVT, and award to the offeror whose proposal does represent the best value under the evaluation scheme.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). In accordance with 4 C.F.R. § 21.8(f)(1), Satellite's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the contracting agency within 60 days after receipt of this decision.

Anthony H. Gamboa
Acting General Counsel